

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

PHILIP ROY GALANTI,

Plaintiff,

vs.

NEVADA DEPT. OF CORRECTIONS, *et al.*,

Defendants.

Case No.: 2:19-cv-01044-GMN-EJY

**ORDER**

Pending before the Court is the Motion to Dismiss, (ECF No. 22), filed by Defendants Nevada Department of Corrections (“NDOC”), James Dzurenda, Brian Williams, Alessia Moore, Jennifer Nash, Kim Peterson, and Anthony Ritz, (collectively, “NDOC Defendants”). Pro se Plaintiff Philip Roy Galanti (“Plaintiff”) filed a Response, (ECF No. 30), and the NDOC Defendants filed a Reply, (ECF No. 31).

Also pending before the Court is Defendant Clark County School District’s (“CCSD’s”) Motion to Dismiss, (ECF No. 24). Plaintiff did not file a Response.

Also pending before the Court is Plaintiff’s Motion for Ruling, (ECF No. 34), on NDOC Defendants’ Motion to Dismiss.

Also pending before the Court is NDOC Defendants’ Motion to Stay Discovery, (ECF No. 44).

For the reasons discussed below, the Court **GRANTS** the NDOC Defendants’ Motion to Dismiss, **GRANTS** CCSD’s Motion to Dismiss, and **DENIES** Plaintiff’s Motion for Ruling and NDOC Defendants’ Motion to Stay Discovery as moot.

1 **I. BACKGROUND**

2 This is a civil rights case arising under 42 U.S.C. § 1983 with Plaintiff alleging that  
3 Defendants unduly delayed his release on parole and extended his sentence in violation of his  
4 constitutional rights. (*See generally* First Am. Compl. (“FAC”), ECF No. 21). Plaintiff was  
5 formerly an inmate at High Desert State Prison (“HDSP”) who was paroled on June 1, 2018.  
6 (FAC at 1, 10). Plaintiff commenced this action on June 18, 2019, alleging violations of his  
7 Fourteenth Amendment due process and equal protection rights, as well as Fourth, Fifth, and  
8 Eighth Amendment claims against the NDOC, CCSD, NDOC Director James Dzurenda,  
9 Warden Brian Williams, Associate Warden Jennifer Nash, NDOC Administrator Kim Peterson,  
10 and HDSP caseworkers Alessia Moore and Anthony Ritz, (collectively, “Defendants”).  
11 (Compl. at 2–3, 6–8, ECF No. 1). On December 19, 2019, Plaintiff filed his First Amended  
12 Complaint, alleging the same. (*See generally* FAC).

13 In his First Amended Complaint, Plaintiff claims that Defendants failed to apply the  
14 good-time education credits that he earned pursuant to NRS 209.4465 to his minimum sentence  
15 and parole eligibility dates, resulting in an extended period of incarceration. (*Id.*). Plaintiff  
16 calculates that he is owed “approximately 40 days” under NRS 209.4465(2), which awards “10  
17 days of credit each month for an offender whose diligence in labor and study merits such  
18 credit.” (*Id.* at 8). Plaintiff claims an additional 150 days, supposedly under NRS  
19 209.4465(2)(a)–(b), for receiving his high school diploma and completing a vocational course.  
20 *See* NRS 209.4465(2)(a)–(b) (awarding offenders 90 days of good time credits for receiving  
21 their high school diploma, and 60 days for vocational courses); (*Id.* at 6). Therefore, Plaintiff  
22 asserts that he should have been released on parole around April 10, 2018, and that his sentence  
23 should have expired on June 1, 2018. (*Id.* at 6). Instead he was paroled on June 1, 2018, and  
24 his sentence expired in August of 2018. (*Id.* at 10).

## 1 **II. LEGAL STANDARD**

2 Dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(6) where a pleader  
 3 fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp.*  
 4 *v. Twombly*, 550 U.S. 544, 555 (2007). A pleading must give fair notice of a legally cognizable  
 5 claim and the grounds on which it rests, and although a court must take all factual allegations as  
 6 true, legal conclusions couched as a factual allegations are insufficient. *Twombly*, 550 U.S. at  
 7 555. Accordingly, Rule 12(b)(6) requires “more than labels and conclusions, and a formulaic  
 8 recitation of the elements of a cause of action will not do.” *Id.* “To survive a motion to dismiss,  
 9 a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief  
 10 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,  
 11 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that  
 12 allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
 13 alleged.” *Id.* This standard “asks for more than a sheer possibility that a defendant has acted  
 14 unlawfully.” *Id.*

15 If the court grants a motion to dismiss for failure to state a claim, leave to amend should  
 16 be granted unless it is clear that the deficiencies of the complaint cannot be cured by  
 17 amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Pursuant  
 18 to Rule 15(a), the court should “freely” give leave to amend “when justice so requires,” and in  
 19 the absence of a reason such as “undue delay, bad faith or dilatory motive on the part of the  
 20 movant, repeated failure to cure deficiencies by amendments previously allowed, undue  
 21 prejudice to the opposing party by virtue of allowance of the amendment, futility of the  
 22 amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

## 23 **III. DISCUSSION**

24 In their Motion to Dismiss, the NDOC Defendants allege that Plaintiff fails to state a  
 25 claim upon which relief can be granted. (NDOC Mot. Dismiss (“NDOC MTD”) 1:24, ECF No.

22). The NDOC Defendants assert several reasons for dismissal, such as: Plaintiff cannot sue the NDOC or the NDOC Defendants in their official capacity for damages under 42 U.S.C. § 1983, Plaintiff's claims are barred by *Heck v. Humphry*, 512 U.S. 477 (1994), and Plaintiff failed to state Fourteenth Amendment due process and equal protection claims under Fed. R. Civ. P. 12(b)(6). (NDOC MTD 3:18 –19, 4:1–2, 4:14, 5:20, 6:8). In its Motion, CCSD incorporates the arguments in the NDOC Defendants' Motion and further claims that CCSD has no authority over the application of education credits to Plaintiff's sentence or his alleged extended incarceration. (*See generally* CCSD Mot. Dismiss "CCSD MTD," ECF No. 24). The Court first addresses whether Plaintiff's allegations can support a Fourteenth Amendment claim.

#### **A. Due Process**

Plaintiff claims that the NDOC Defendants failed to apply the good-time credits that he earned by attending educational classes to his parole eligibility date, which extended his period of incarceration without due process. (FAC at 5–6). To state a Fourteenth Amendment due process claim, a plaintiff must adequately allege that he was denied a specific liberty interest and that he was deprived of that liberty interest without the constitutionally required procedures. *See Swarthout v. Cooke*, 562 U.S. 216, 219 (2011). Allegations that a defendant misapplied state law are not sufficient to state a claim for violating the Fourteenth Amendment's due process clause. *Id.* at 222 (holding that a "mere error of state law is not a denial of due process").

In Nevada, state prisoners do not have a liberty interest in parole or parole eligibility. *See Moor v. Palmer*, 603 F.3d 658, 661–62 (9th Cir. 2010); *Fernandez v. Nevada*, No. 3:06-CV-00628-LRH-RAM, 2009 WL 700662, at \*10 (D. Nev. June 4, 2012). Additionally, there is no liberty interest in prison education or rehabilitation classes. *See Hernandez v. Johnson*, 833 F.2d 1316, 1319 (9th Cir. 1987). Plaintiff bases his due process claim on the fact that

1 Defendants failed to apply good-time education credits to his parole eligibility date. (FAC at 5–  
2 6). As such, the Court finds that Plaintiff fails to state a colorable due process claim because he  
3 does not claim the deprivation of a liberty interest. Further, Defendants alleged failure to  
4 comply with NRS 209.4465 is an error of state law, and thus cannot be the proper basis for a  
5 due process claim. *See Young v. Williams*, No. 2:11-CV-01532-KJD, 2012 WL 1984968, at \*3  
6 (D. Nev. June 4, 2012) (holding that alleged error in applying good-time credits was an error of  
7 state law that did not constitute a due process violation). Therefore, the Court dismisses  
8 Plaintiff’s due process claim with prejudice.

### 9 **B. Equal Protection**

10 To assert his equal protection claim, Plaintiff alleges that the NDOC Defendants treat  
11 inmate workers and inmate students differently because inmate workers received “10 days of  
12 sentence reductions whether they had worked 1 day or 20 days,” but inmate students only  
13 received “2 to 10 days per month served and [were] given nothing for education break periods.”  
14 (FAC at 5). Plaintiff further alleges that his good-time credits were not applied properly  
15 because he is a felon and a sex-offender. (*Id.* at 10).

16 The Equal Protection Clause of the Fourteenth Amendment requires a state to treat all  
17 similarly situated people equally. *See City of Cleburne v. Cleburne Living Center*, 473 U.S.  
18 432, 439 (1985). Where an inmate is not a member of a protected class, an equal protection  
19 claim is subject to the rational basis test. *See McGinnis v. Royster*, 410 U.S. 263, 270 (1973)  
20 (applying rational basis test where state law denied certain state prisoners good-time credit  
21 toward parole eligibility for the period of their presentence county jail incarceration, whereas  
22 those released on bail prior to sentencing received good-time credit for the entire period of their  
23 prison confinement). Under a rational basis inquiry, in order to prevail on an equal protection  
24 claim, a plaintiff must demonstrate that (1) he is similarly situated to others, (2) he is being  
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1 treated worse than others with whom he is similarly situated, and (3) there is no rational basis  
2 for the disparate treatment. *More v. Farrier*, 984 F.2d 269, 271 (8th Cir. 1993).

3 Plaintiff's equal protection claim is based on the alleged disparate treatment between  
4 inmate workers and inmate students. (*See* FAC at 10–12). However, inmate workers and  
5 students are not similarly situated. For example, NRS 209.4465 treats inmate workers and  
6 students differently for purposes of awarding good-time credits. Under the statute, inmate  
7 students are able to earn a lump-sum amount of credits for completing certain educational  
8 milestones, such as receiving a high school diploma, in addition to earning a possible ten  
9 credits each month for study time; inmate workers are only entitled to ten credits each month  
10 for work time. *See* NRS 209.4465(2). Further, prison workers and students have different  
11 responsibilities and assignments. Workers perform prison maintenance and services by staffing  
12 positions in the laundry, kitchen, etc., while inmate students attend educational classes. (Resp.  
13 at 7–8, ECF No. 30). Accordingly, inmate workers and students are not similarly situated.  
14 While Plaintiff is similarly situated to other inmate students, he has neither provided evidence  
15 that he is being treated differently than them, nor alleged that the differential treatment between  
16 workers and students under NRS 209.4465 is facially unconstitutional.

17 Further, with regards to Plaintiff's claims of discrimination based on his status as a felon  
18 and sex-offender, Plaintiff provides no factual allegations to demonstrate that any other inmates  
19 were similarly situated to Plaintiff as felon sex-offenders.<sup>1</sup> Thus, the Court dismisses Plaintiff's  
20 equal protection claims without prejudice.

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23 <sup>1</sup> The Court also acknowledges that NRS 209.4465(8) itself lawfully discriminates against certain felonies  
24 committed after July 1, 2007, such as Class A and B offenses or sexual or violent offenses punishable by felony.  
25 *See Vickers v. Dzurenda*, 433 P.3d 306 (Nev. App. 2018), (holding that NRS 209.4465(8) does not violate the  
equal protection clause by excluding certain offenders from applying their good-time credits to parole eligibility  
and minimum sentences). Good time credits are not applied to the parole eligibility dates or minimum sentences  
for these types of offenders. *See* NRS § 209.4465(8). Plaintiff does not allege his underlying offense, only that  
he is a sex-offender. (FAC at 10). However, depending on the underlying offense, it is possible that Plaintiff was  
not eligible to receive good-time credits by statute.

